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Paper No. 9

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**OFFICE OF PETITIONS**

In re Application of  
Frederick A. Ware, et al.  
Application No. 10/053,340  
Filed: October 22, 2001  
Attorney Docket No. 1726.7220701

DECISION GRANTING PETITION  
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed August 2, 2002, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on April 23, 2002 and April 24, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of

such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(iii) will be rescinded in due course.

Telephone inquiries concerning this decision should be directed to Marianne Morgan at (703) 306-3475.

This application will be forwarded to the Office of Initial Patent Examination for further processing and for mailing of a corrected Filing Receipt which sets forth the projected publication date. In the meantime, the file will be held in the Office of Petitions for appropriate action on the "Petition and Response to Notice to File Corrected Application Papers," filed August 2, 2002.



Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy